



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XC878

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Replacement of Pier 3 at Naval Station Norfolk in Norfolk, Virginia

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of renewal incidental harassment authorization (IHA).

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a renewal IHA to the U.S. Navy to harass marine mammals incidental to construction activities associated with the replacement of Pier 3 at Naval Station Norfolk in Norfolk, Virginia.

DATES: This renewal IHA is effective from April 1, 2023 through March 21, 2024.

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at:

<https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when

(1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of

the renewal process may be found on our website at:

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.

History of Request

On March 15, 2022, NMFS issued an IHA to the United States Navy (Navy) to take marine mammals incidental to the replacement of Pier 3 at Naval Station Norfolk in Norfolk, Virginia (87 FR 15945), effective from April 1, 2022 through March 31, 2023. On July 29, 2022, NMFS received a request from the Navy for a modification to the Pier 3 replacement project IHA due to a change in the construction contractor's plan to include concurrent pile driving and drilling activities, and a modified IHA was issued to the Navy on January 18, 2023 (88 FR 2880). Hereafter, any references to the initial IHA (as modified) refer to the modified IHA issued on January 18, 2023, while the 2022 IHA will be referred to as the 2022 initial IHA. On February 23, 2023, NMFS received a request for the renewal of the initial IHA (as modified). After discussion with the Navy, NMFS received a final revised request to renew the initial IHA (as modified) on March 7, 2023. As described in that request, the activities for which incidental take is authorized consist of a subset of the identical activities covered in the initial authorization (as modified). As required, the applicant also provided a preliminary monitoring report (available at *<https://www.fisheries.noaa.gov/action/incidental-take-authorization-replacement-pier-3-naval-station-norfolk-norfolk-virginia>*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. There are no changes from the proposed authorization to the final authorization.

Description of the Specified Activities and Anticipated Impacts

The Navy is replacing Pier 3 at Naval Station (NAVSTA) Norfolk in Norfolk, VA. The existing Pier 3 is being demolished and a new Pier 3 will be constructed immediately north of the existing location (see Figure 1 in the **Federal Register** notice for the proposed 2022 initial IHA; 87 FR 3976, January 26, 2022). Work at Pier 4, Pier 3T, and the bulkheads associated with Pier 3 and 3T is necessary to support the Pier 3 replacement. Pier 3 has been in a deteriorated state and does not provide minimum operation requirements for NAVSTA Norfolk. In-water work associated with Pier 4, including timber pile removal and concrete pile installation, has been completed under the 2022 initial IHA. In addition, concrete pile removal at Pier 3T will be completed by the expiration of the initial IHA. However, in-water work associated with construction of the CEP-176 and CEP-175 bulkheads, the CEP-102 bulkhead and relieving platform, and the new Pier 3, as well as installation of piles necessary for Pier 3T, will not be completed by the expiration date of the initial IHA (as modified). During the renewal period, the activities that will occur are the same as previously analyzed under the initial IHA (as modified). These activities include the installation of 42-inch (1.07 meters (m)) steel pipe piles, 28-inch (0.71 m) steel sheet piles, 13-inch (0.33 m) polymeric piles, and 24-inch (0.61 m) precast concrete piles. Pre-drilling may be used to set the piles to depth. The remaining in-water construction associated with these activities is planned to occur from April 1, 2023 through June 30, 2023.

Under the 2022 initial IHA, Level A and Level B harassment resulting from pile driving and drilling activities was authorized for harbor seals (*Phoca vitulina*), gray seals (*Halichoerus grypus*), and harbor porpoises (*Phocoena phocoena*). Level B harassment only resulting from pile driving and drilling activities was authorized for bottlenose dolphins (*Tursiops truncatus*) and humpback whales (*Megaptera novaeangliae*). Neither the Navy nor NMFS expects serious injury or mortality to result from this activity and, therefore, a renewal IHA is appropriate.

The following documents are referenced in this notification and include important supporting information:

- 2023 final initial IHA (as modified) (88 FR 2880, January 18, 2023);
- 2023 proposed initial IHA (as modified) (87 FR 75600, December 9, 2022);
- 2022 final initial IHA (87 FR 15945, March 21, 2022); and
- 2022 proposed initial IHA (87 FR 3976, January 26, 2022).

The 2022 initial IHA application, IHA modification request, 2022 initial IHA, initial IHA (as modified), and references are available at

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-replacement-pier-3-naval-station-norfolk-norfolk-virginia>.

Detailed Description of the Activity

A detailed description of the construction activities may be found in the **Federal Register** notice associated with the issuance of the 2022 initial IHA (87 FR 3976, January 26, 2022). A description of the concurrent pile driving activities associated with the initial IHA (as modified) may be found in the **Federal Register** notice of issuance of the initial IHA (as modified) (88 FR 2880, January 18, 2023). The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices.

At the time of the renewal request, the following individual activities have been completed for the following structures:

- Pier 4
 - Vibratory removal of 36 14-inch timber piles; and
 - Pre-drilling and impact installation of 36 24-inch precast concrete square piles.
- Pier 3T
 - Vibratory removal of 87 14-inch timber piles; and

- Vibratory removal of 196 18-inch precast concrete square piles.

At the time of the renewal request, the following concurrent activities have been completed for the following structures:

- Pier 3T and Pier 4
 - Vibratory removal of 14-inch timber and 18-inch concrete piles and impact installation of 24-inch concrete piles; and
 - Vibratory removal of 14-inch timber and 18-inch concrete piles and rotary drill of 24-inch concrete piles, with 90 concrete piles remaining as noted about for Pier 3T.
- Pier 3T and Pier 3
 - Vibratory removal of 14-inch timber and 18-inch concrete piles and impact installation of 24-inch concrete piles, with four concrete piles remaining to be installed.

A detailed description of the planned in-water individual activities and concurrent activities is provided in the **Federal Register** notice for the proposed renewal IHA (88 FR 15675, March 14, 2023). Since that time, no changes have been made to the planned in-water construction activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activities.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which take is authorized, including information on abundance, status, distribution, and hearing, may be found in the notice of the proposed IHA for the initial authorization (87 FR 3976, January 26, 2022). NMFS has reviewed the monitoring data from the initial IHA (as modified), recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the

pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the 2022 initial IHA. The only changes indicated in the draft 2022 SARs are that the Potential Biological Removal value for the gray seal Western North Atlantic stock increased from 1,389 to 1,458, annual mortality and serious injury of the harbor porpoise Gulf of Maine/Bay of Fundy stock decreased from 217 to 164, and humpback whale Gulf of Maine stock is no longer considered a strategic stock.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is authorized may be found in the notices of the proposed IHA for the 2022 initial authorization. NMFS has reviewed the monitoring data from the initial IHA (as modified), recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified individual activity are found in the notices of the proposed and final IHAs for the initial authorization (87 FR 3976, January 26, 2022; 87 FR 15945, March 21, 2022) and for the specified concurrent activities, in the notices of the proposed and final initial IHAs (as modified) (87 FR 75600, December 9, 2022; 88 FR 2880, January 18, 2023). Activities authorized under the renewal IHA are subject to the same sound propagation boundaries as those analyzed for the 2022 initial IHA and initial IHA (as modified). The analysis of sound source level and sound pressure level (SPL) propagation provided in the 2022 initial IHA and initial IHA (as modified) remain applicable to the activities

covered in this renewal IHA. Marine mammal density/occurrence data applicable to this authorization remain unchanged from the 2022 initial IHA.

Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued initial IHA. The take calculation method also remains the same, with the exception of fewer days of activity than what was described in the initial IHA. The approximate total number of operational days for this renewal IHA is 90 days as compared to the 280 days required for the project under the initial IHA. The number of takes authorized through the renewal IHA are indicated below in Table 1.

The total take number for bottlenose dolphins was estimated using inshore seasonal densities provided in Engelhaupt *et al.* (2016) from vessel line-transect surveys near NAVSTA Norfolk and adjacent areas near Virginia Beach, Virginia from August 2012 through August 2015. This density includes sightings inshore of the Chesapeake Bay from NAVSTA Norfolk west to the Thimble Shoals Bridge, and is the most representative density for the project area. NMFS multiplied the density of 1.38 dolphins per square kilometer by the Level B harassment zone area for each activity for the project, and then by the number of days associated with that activity (see Table 1). The Level B harassment zones increased as a result of concurrent pile driving activities; therefore, calculated Level B harassment exposure estimates also increased as a result. As described in the notice of the initial proposed and issued IHA, there is insufficient information on relative abundance to apportion the takes precisely to each of the three stocks in the area. Therefore, the same approach as used in previous projects (*e.g.*, Hampton Roads Bridge Tunnel project (86 FR 17458, April 2, 2021), and the U.S. Navy Norfolk Maintenance Rule (86 FR 24340, May 6, 2021)) was used to estimate the apportionment of takes to each of the three bottlenose dolphin stocks that may be present in the area. Given that most of the Northern North Carolina Estuarine Stock (NNCES) are found in the Pamlico Sound Estuary, over 160 kilometers from Norfolk, we

conservatively estimated that no more than 200 of the authorized takes will be from this stock. Since members of the northern migratory coastal and southern migratory coastal stocks are thought to occur in or near the Bay in greater numbers, we conservatively assume that no more than half of the remaining takes will accrue to either of these stocks. Additionally, a subset of these takes would likely be comprised of the Chesapeake Bay resident dolphins, although the size of that population is unknown.

Based upon the methodology for estimating take for the initial IHA (as modified) (88 FR 2880, January 18, 2023), the Navy calculated potential exposure to Level A harassment for gray seals by assuming 20 percent of potential take events would be by Level A harassment. As only one take is estimated to occur under the renewal IHA, we assume that individual take will be by Level B harassment only. Therefore, the Navy did not request, and NMFS has not authorized, take by Level A harassment for gray seals.

The total taking by Level B harassment of all species is predicted to be the same or lower with concurrent activity scenarios due to a lower number of construction days for concurrent activities; therefore, the authorized take from individual activities represents the most conservative take estimate.

Table 1 -- Authorized Take and Percent of Stock Authorized for Take

Species	Stock	Individual Activities		Concurrent Activities		Percent of Stock ¹
		Level A	Level B	Level A	Level B	
Bottlenose dolphin	Western North Atlantic Coastal, Northern Migratory	0	1,281	0	486	19.3 ²
	Western North Atlantic Coastal, Southern Migratory		1,280		485	34.1 ²
	Northern North Carolina Estuarine		200		200	24.3 ²
Harbor seal	Western North Atlantic	57	759	53	478	1.33
Gray seal	Western North Atlantic	0	1	0	1	0.004
Harbor porpoise	Gulf of Maine/Bay of Fundy	2	2	0	2	0.004
Humpback whale	Gulf of Maine	0	4	0	2	0.29

¹ Percent of stock calculation based upon the largest take calculation from either individual or concurrent activities.

² Assumes multiple repeated takes of same individuals from a portion of each stock representing small numbers.

Description of Mitigation, Monitoring, and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the FR notice announcing the issuance of the 2022 initial IHA (87 FR 15945, March 21, 2022) for individual activities and the FR notice announcing the issuance of the initial IHA (as modified) (88 FR 2880, January 18, 2023) for concurrent activities, and the discussion of the least practicable adverse impact included in that document remains accurate. The same measures are included for this renewal and are summarized here:

- The Navy must implement shutdown zones for all pile driving and removal and drilling activities. Shutdown zones would vary based upon the activity type and marine mammal hearing group, as shown in Table 2 for individual activities and Table 3 for concurrent activities. The Navy must shut down if any marine mammals come within hearing group-specific shutdown zones;
- The Navy must implement impact pile driving soft-starts at the beginning of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or more. To implement soft-start, contractors will be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced energy strike sets;
- Protected Species Observers (PSOs) must monitor the entirety of all shutdown zones as well as Level B harassment zones to the extent practicable during all pile driving and removal and drilling activities. Monitoring must be conducted by a minimum of two PSOs for impact driving, and a minimum of three PSOs for vibratory and drilling activities;
- Pre-activity monitoring must begin prior to the start of daily in-water construction

activities or whenever a break in pile driving/removal of 30 minutes or longer occurs. Pre-activity and post-activity monitoring must take place for a period of 30 minutes prior to beginning construction activities and after construction activities are complete for the day;

- Acoustic monitoring shall include two underwater positions as well as be conducted in accordance with NMFS guidance for 10 percent of each type of activity that has not previously been monitored at NAVSTA Norfolk (see Table 4);
- The Navy must submit draft marine mammal and acoustic monitoring reports to NMFS within 90 days after the completion of pile driving and removal and drilling activities under the renewal IHA;
- The Navy must prepare and submit final monitoring reports within 30 days following resolution of comments on the draft reports from NMFS;
- The Navy must submit all PSO datasheets and/or raw sighting data (in a separate file from the Final Report referenced immediately above); and
- The Navy must report injured or dead marine mammals.

Table 2 -- Shutdown and Harassment Zones for Individual Pile Driving Activities

Pile size, type, and method	Minimum shutdown zone (m)			Harassment zone (m) ¹
	Humpback whale	Porpoises	All Other Species	
Impact Driving, 42-inch Steel Pipe Pile	1,005	500	200	1000
Vibratory Driving, 42-inch Steel Pipe Pile	50	120	50	15,850
Impact Driving, 28-inch Steel Sheet Piles	775	500	200	2,520
Vibratory Driving, 28-inch Steel Sheet Piles	65	65	65	13,600
Impact Driving, 13-	30	30	30	10

inch Polymeric Piles				
Vibratory Driving, 13-inch Polymeric Piles	30	30	30	6,310
Impact Driving, 24-inch Concrete Piles	160	500	200	120
Vibratory Driving, 24-inch Concrete Piles	10	10	10	1,850

¹ Rounded to the nearest 10 m.

Table 3 -- Shutdown and Harassment Zones for Concurrent Pile Driving Activities

Pile sizes, type, and method	Minimum shutdown zone (m)			Harassment zone (m) ¹
	Humpback whale	Porpoises	All Other Species	
Vibratory removal 18-inch concrete piles and vibratory installation 42-inch steel pipe piles	200	200	50	18,480
Vibratory removal 18-inch concrete piles and pre-drilling for preparation of 24-in concrete pile install	45	45	30	7,360

¹ Rounded to the nearest 10 m.

Table 4 -- Acoustic Monitoring Summary¹

Pile Type	Count	Method of Install/Removal	Number Monitored
13-inch polymeric	9	Vibratory	5
13-inch polymeric	9	Impact	5
13-inch polymeric	9	Drilling	5
24-inch concrete	11	Impact	10
42-inch steel pipe	103	Impact	10
42-inch steel pipe	103	Vibratory	10
28-inch steel sheet	221	Impact	10
28-inch steel sheet	221	Vibratory	10

¹ Acoustic monitoring will be conducted for activities for which measurements are needed.

Comments and Responses

A notice of NMFS' proposal to issue a renewal IHA to the U.S. Navy was published in the **Federal Register** on March 14, 2023 (88 FR 15675). That notice either described, or referenced descriptions of, the U.S. Navy's activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring, and reporting measures. NMFS received one comment letter from a private citizen that was not relevant to the scope of the proposed action. No other comments were received.

Determinations

The renewal request consists of a subset of activities analyzed through the initial IHA and initial IHA (as modified) described above. The methods of determining estimated take, potential effects, and required mitigation, monitoring, and reporting have not changed.

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). In analyzing the effects of the activities for the initial IHA, NMFS determined that the Navy's activities would have a negligible impact on the affected species or stocks and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than one-third the abundance of all stocks).

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA (as modified). Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the

authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) the Navy's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated

critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Renewal

NMFS has issued a renewal IHA to the Navy for the take of marine mammals incidental to pile driving and drilling activities at NAVSTA Norfolk in Norfolk, VA, effective through March 31, 2024.

Dated: March 30, 2023.

Catherine Marzin,

Deputy Director, Office of Protected Resources,

National Marine Fisheries Service.

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